

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:17-cv-00854-TDS-LPA

REBECCA KOVALICH and SUZANNE)
NAGELSKI,)

Plaintiffs,)

v.)

PREFERRED PAIN MANAGEMENT &)
SPINE CARE, P.A., DR. DAVID SPIVEY,)
individually, and SHERRY SPIVEY,)
individually.)

Defendants.)

Exhibit 23

Apr. 25. 2017 1:42PM

No. 3056 P. 1/1

EEOC Form 5 (11/02)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: Agency(ies) Charge No(s): <div style="display: flex; align-items: center;"> <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC </div> 430-2017-01228	
and EEOC			
State or local Agency, if any			
Name (indicate Mr., Ms., Mrs.)		Home Phone (incl. Area Code)	Date of Birth
			1957
Street Address		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name		No. Employees, Members	Phone No. (include Area Code)
Preferred Pain Management & Spine Care, PA		25+	336-760-0706
Street Address		City, State and ZIP Code	
2912 Maplewood Avenue Winston-Salem, NC 27103			
Name		No. Employees, Members	Phone No. (include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es)) <div style="display: flex; flex-wrap: wrap;"> <div style="margin-right: 10px;"><input type="checkbox"/> RACE</div> <div style="margin-right: 10px;"><input type="checkbox"/> COLOR</div> <div style="margin-right: 10px;"><input type="checkbox"/> SEX</div> <div style="margin-right: 10px;"><input type="checkbox"/> RELIGION</div> <div style="margin-right: 10px;"><input type="checkbox"/> NATIONAL ORIGIN</div> <div style="margin-right: 10px;"><input type="checkbox"/> RETALIATION</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> AGE</div> <div style="margin-right: 10px;"><input type="checkbox"/> DISABILITY</div> <div style="margin-right: 10px;"><input type="checkbox"/> GENETIC INFORMATION</div> <div style="margin-right: 10px;"><input type="checkbox"/> OTHER (Specify)</div> </div>		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 10/27/2016 10/27/2016 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <div style="text-align: center; padding: 20px;">Please see attached statement.</div>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements 	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
Date 04/25/2017		SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2017. April 25, 2017	
		OFFICIAL SEAL Notary Public - North Carolina County of Davidson RAMONA B. YARBROUGH MY COMMISSION EXPIRES May 8, 2021	

DEFENDANTS000765

CONFIDENTIAL

CP Enclosure with EEOC Form 5 (11/09)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please notify EEOC or the state or local agency where you filed your charge if **retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

DEFENDANTS000766

CHARGE OF DISCRIMINATION OF [REDACTED]
EMPLOYER: Preferred Pain Management & Spine Care, PA

Statement of Particulars

Charging Party, [REDACTED] who turned 60 years old on [REDACTED] 2017, contends that she was terminated from her employment with Preferred Pain Management & Spine Care, PA ("PPMSC" or "the Practice") based on her age, in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq. ("the ADEA").

[REDACTED] began working for PPMSC in September 2009 as an insurance pre-certification specialist primarily in the Winston-Salem office. [REDACTED] worked part time up until October 2015, at which time she began full time employment. While working in that role, she did not receive any warnings, reprimands, write-ups, or other disciplinary actions suggesting that she had violated any PPMSC policies or failed to perform her duties in an unsatisfactory manner.

Despite a solid record of work performance, [REDACTED] was informed on October 27, 2016 that she was being terminated. When she inquired about whether there were any concerns regarding her performance, she was informed that there were none. In fact, at that time she requested was provided with a very favorable recommendation letter, commending her work, a copy of which is attached hereto as Exhibit A.

[REDACTED] was troubled upon being terminated, and began to question whether there was a chance her termination was motivated in part by her age. This concern was only fueled when she learned that her duties were assumed by a considerably younger person. Moreover, as she considered the other employees she had known who had been terminated in the preceding 10-12 months, she realized that every one of them was over 40, while numerous employees in their 30s and even younger had been retained or hired (through temp agency arrangements or otherwise). Upon further investigation, she determined that PPMSC had terminated at least a dozen employees that she knew of over the last 12 months, and that at least 11 of them had been aged 40 or older. Eight of them were in fact 50 or older, as demonstrated on the chart attached hereto as Exhibit B. A number of these employees have, upon information and belief, filed their own individual charges with the EEOC.

Accordingly, [REDACTED] through her counsel made demand of PPMSC, but has not been provided with a satisfactory explanation for the termination of so many older, protected workers. nor has she been provided an opportunity to examine the records of PPMSC to determine if indeed the pattern she has detected holds true. However, the pattern that appears in the terminations that she is aware of indicates a willful disregard for the protections afforded by the ADEA, and she hereby requests that the EEOC conduct a full investigation of PPMSC's employment termination decisions. To the extent that PPMSC attempts to characterize [REDACTED] termination or any of the others as a layoff or reduction-in-force, [REDACTED] also would request that the EEOC investigate and determine whether PPMSC complied with the requirements of the Older Workers Benefit Protection Act, 29 U.S.C. §623.

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DEFENDANTS000768